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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHNNIE C. WHITE,

Plaintiff,

V.

KENNETH PAUL SMITH AND
DANIEL MARK FOZZARD.,

Defendants.

Case No. C06-5170RBL

REPORT AND RECOMMENDATION

Noted for September 22nd, 2006

18 This action, brought pursuant to 42 U.S.C. 1983, has been referred to the undersigned
19 Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The court ordered plaintiff to show
20 cause why this action should not be dismissed as the facts alleged appear to be intertwined with his
21 conviction. (Dkt. # 6). Plaintiff asked for, and received, an extension of time to file a response.
22 (Dkt. # 7 and 8). Plaintiff has not responded.

FACTS

24 Plaintiff names two Tacoma City Police Officers as defendants, and alleges excessive force
25 was used in arresting him on September 23rd, 2004. While plaintiff alleges he offered no resistance to
26 his arrest, plaintiff was convicted of two counts of third degree assault. One count with regard to
27 defendant Officer Smith and one count with regard to defendant Officer Fozzard. (Dkt. # 5, page
28 Report and Recommendation - 1

1 12).

2 The court ordered plaintiff to show cause why this action should not be dismissed as the facts
3 alleged appear to be intertwined with his conviction. (Dkt. # 6). Plaintiff did not file a response to
4 the order to show cause. On June 13th, 2006 plaintiff asked that he be given "the most time possible"
5 to complete a response. (Dkt. # 7). Plaintiff was nearly two months, until August 11th, 2006, to
6 have a response filed. As of August 28th, 2006 nothing has been filed.

7 DISCUSSION

8 Nothing has been filed as of August 28th, 2006. The court therefore recommends this action
9 be **DISMISSED WITH PREJUDICE** and with the dismissal counting as a strike pursuant to the
10 Prison Litigation Reform Act, 28 U.S.C. 1915 (g). Plaintiff has failed to cure the deficiencies in this
11 action despite being given opportunity to do so. He has also failed to respond to a court order. A
12 proposed order accompanies this Report and Recommendation.

13 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
14 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
15 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
16 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
17 72(b), the clerk is directed to set the matter for consideration on **September 8th, 2006**, as noted in
18 the caption.

19
20 DATED this 28th, day of August, 2006.

21 /S/ J. Kelley Arnold
22 J. Kelley Arnold
23 United States Magistrate Judge
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